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September 14, 1993

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SEP 14 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: KMPX, Decatur, Texas

Dear Mr. Caton:

Transmitted herewith, are an original and four (4) copies of a Further Supplement to Petition for Reconsideration filed by Word of God Fellowship, Inc., permittee of Station KMPX(TV), Decatur, Texas.

Should further information be desired in connection with this Further Supplement, please communicate with this office.

Very truly yours,



Robert L. Olender
Counsel for
WORD OF GOD FELLOWSHIP, INC.

RLO:bpt
Enclosures

cc: Mr. Vicky McCauley (w/enclosure via hand delivery FCC)
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Before the
Federal Communications Commission
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No.
Table of Allotments,)	RM-
Television Broadcast Stations)	
(Decatur and Plano, Texas))	

To: Chief, Mass Media Bureau

FURTHER SUPPLEMENT TO PETITION FOR RECONSIDERATION

Word of God Fellowship, Inc. ("Word of God"), permittee of Station KMPX(TV), Channel 29, Decatur, Texas, through counsel, herein Further Supplements its Petition for Reconsideration filed November 6, 1989. This Further Supplement is intended to report an action by the FCC which has potential impact on Word of God's request for change in community of license from Decatur to Plano, Texas.

The Commission on February 2, 1992, granted a change in community of license for Station KSTV-FM on Channel 289C from Stephenville, Texas to Decatur, Texas. (See Attachment A) Thus, the allotment of KSTV-FM to Decatur should be evaluated in Word of God's rulemaking request, since there is a local broadcast service licensed to Decatur.

Based upon this information and the other documentation submitted in March 1993, Word of God urges the Commission to act on its Petition and issue an order permitting this

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rulemaking to go forward so that it can implement its change of license to Plano, Texas at the earliest possible time.

Respectfully submitted,

WORD OF GOD FELLOWSHIP, INC.

By: 

Robert L. Olender
Its Attorney

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September 14, 1993

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

MM Docket No. 90-101

In the Matter of

Amendment of Section 73.202(b),	RM-7062
Table of Allotments,	RM-7449
FM Broadcast Stations.	RM-7450
(Stephenville, Benbrook,	RM-7451
Decatur, Jacksboro, and	
Wichita Falls, Texas;	
and Healdton, and Lone Grove,	
Oklahoma) ¹	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: January 27, 1992; Released: February 7, 1992

By the Chief, Allocations Branch:

1. The Commission has before it the *Notice of Proposed Rule Making and Order to Show Cause*, 5 FCC Rcd 1575 (1990) ("Notice"), issued in response to the request of Cen-Tex Media, Inc. ("petitioner"). The Notice proposed the substitution of Channel 289C for Channel 289C1 at Stephenville, Texas, the reallocation of Channel 289C from Stephenville to Benbrook, Texas, and the modification of the license of Station KSTV-FM to specify operation on Channel 289C at Benbrook. In order to accomplish the upgrade, the Notice also proposed the substitution of Channel 269A for vacant Channel 229A at Jacksboro, Texas,² and the substitution of Channel 273A for Channel 288A at Wichita Falls, Texas.³ An *Order to Show Cause* was issued to Lake Country Communications, Inc. ("Lake Country"), licensee of Station KICM(FM), Channel 289C2, Healdton, Oklahoma, directing the licensee to demonstrate why its license should not be modified to specify operation on Channel 229C2 in lieu of Channel 289C2.

BACKGROUND

2. The following comments and counterproposals were filed before the comment deadline date of May 3, 1990. Petitioner filed supporting comments in response to the Notice. Petitioner's comments also included a counterproposal requesting reallocation of Channel 289C to Decatur, Texas, rather than Benbrook, in the event its proposed change of community to Benbrook is not adopted, and also stated its intention to reimburse Lake Country for its related expenses in changing its frequency to Channel 229C2. William L. Cook ("Cook") filed a counterproposal requesting allotment of Channel 229C1 to Lone Grove, Oklahoma.⁴ Lake Country filed a counterproposal requesting allotment of Channel 229C1 instead of the proposed substitution of Channel 229C2, and also requesting reimbursement for its expenses related to this upgrade. Thereafter, petitioner, Lake Country, and Joseph Bahr filed reply comments.⁵

3. On May 23, 1990, Lake Country withdrew its counterproposal to upgrade on Channel 229C1 at Healdton. Despite this withdrawal, Lake Country's counterproposal was included, along with petitioner's and Cook's counterproposals, in the Commission's *Public Notice* Report No. 1823 issued July 18, 1990. After this *Public Notice* of the counterproposals was issued, petitioner, Lake Country, SSS Communications, Inc., licensee of Station KYNZ(FM), Lone Grove, Oklahoma, and Cook filed reply comments.

THE PLEADINGS

4. In its comments in support of its petition for rule making, petitioner stated that the Commission's minimum distance separation and city-grade coverage requirements dictate that Station KSTV-FM change its community of license in order to achieve the proposed upgrade. Therefore, petitioner proposed the reallocation of Channel 289C to Benbrook, Texas, population 13,579 persons,⁶ or, in the alternative, a counterproposal at Decatur, Texas, population 4,104, in the event the Commission does not adopt the Benbrook proposal. In support, petitioner stated that its proposal or counterproposal would provide first local service and city grade coverage to either Benbrook or Decatur, noting that Stephenville will retain local service from Stations KSTV(AM) and KVOC(FM), while continuing to receive reception service from reallocated Station KSTV(FM). Furthermore, petitioner stated that its original proposal and its counterproposal will utilize the same transmitter site and channel substitutions. With respect to the required channel substitutions, petitioner pointed out that the proposed channel substitution for Station KICM(FM) on Channel 229C2 in Healdton can be made at Station KICM(FM)'s existing transmitter site, and reiterated its willingness to reimburse

¹ The communities of Decatur, Texas, and Lone Grove, Oklahoma, have been added to the caption.

² After the Notice was issued, an application (BPH-900524MA) for Channel 229A was filed by Albert L. Crain.

³ At the time the Notice was issued, five applications were pending for Channel 288A at Wichita Falls, Texas. Since that time, a construction permit was granted to one of the applicants, Sawmill Broadcasting ("Sawmill"). All of the applicants, including Sawmill, were served with the Notice by certified mail, and Commission records show that Sawmill received service on March 16, 1990.

⁴ Coordinates for the proposed allotment are North Latitude 34-05-25 and West Longitude 97-16-00 at a site 8.5 kilometers (5.3 miles) south of the community.

⁵ Bahr's reply comments, which attempt to state an interest in applying for Channel 289C at Benbrook, Texas, will not be considered, because the Notice clearly stated that, pursuant to Section 1.420, no competing expressions of interest would be entertained for Channel 289C at Benbrook.

⁶ All references to population are based on 1980 U.S. Census figures.

Station KICM's licensee, Lake Country, for its reasonable expenses in making the channel substitution. Additionally, petitioner stated that the proposed substitution of Channel 273A for Channel 288A at Wichita Falls, Texas, can be made in compliance with the Commission's spacing requirements with respect to the reference coordinates and for the construction permit for that allotment. Finally, petitioner reaffirmed its intention to apply for the upgraded facility at either community, if allotted, and construct it if issued a permit.

5. In support of his counterproposal, Cook stated that the allotment of Channel 229C1 at Lone Grove, Texas, as the community's first local FM channel, should be made in lieu of the changes proposed in the *Notice of Proposed Rule Making* in this proceeding. Specifically, Cook argued that his counterproposal should be favored over the petitioner's because the allotment of Channel 289C at Benbrook, Texas, would establish another service in the Dallas-Fort Worth metropolitan area, whereas Cook's would result in the establishment of a new wide-coverage FM station at Lone Grove, population 3,369. Cook also argued that his proposal should be favored because his proposal would require only one channel substitution, Channel 269A for vacant but applied for Channel 229A at Jacksboro, Texas, without requiring any existing stations to change frequencies.

6. In response to the *Order to Show Cause*, Lake Country consented to the proposed substitution of Channel 229C2 for Channel 289C2 at Healdton, Oklahoma, and the modification of its license to specify operation on Channel 229C2. Lake Country also filed a counterproposal in which it requested the substitution of Channel 229C1 for Channel 289C2 at Healdton, Oklahoma, and modification of its license accordingly, without being subjected to competing expressions of interest, and that it receive reimbursement for the expenses associated with this upgrade. Thereafter, Lake Country withdrew this counterproposal, stating that it did not want to jeopardize its continued operation of Station KICM(FM).

7. In reply comments, both petitioner and Lake Country opposed Cook's counterproposal, arguing that Cook falsely asserted that his proposal would be providing first service to the community of Lone Grove. Petitioner expressed support for Lake Country's counterproposal, but opposed Lake Country's request for reimbursement for its upgrade. In addition to its request for reimbursement, Lake Country suggested that the Commission allot Channel 253A at Lone Grove.⁷ In response to the Commission's *Public Notice*, petitioner reiterated its contention that its proposal at Decatur is superior to the other proposals pursuant to the Commission's allotment priorities because it will provide first local service to the commu-

nity. Lake Country's reply comments merely reiterated its withdrawal. In his reply comments, Cook stated that his counterproposal, while admittedly not proposing first local service to Lone Grove, should be preferred because it would provide first wide coverage service to the community and would provide the only new service, as all of the other proposals are upgrades. As an alternative, Cook also included an expression of interest in the allotment of Channel 229C1 at Healdton. In its reply comments, SSS, Inc., licensee of Station KYNZ(FM), Lone Grove, Oklahoma, opposed Cook's counterproposal because it is based on an incorrect assertion that Channel 229C1 would be the first local FM Channel allotted to Lone Grove.

DISCUSSION

8. After careful consideration of the pleadings in this matter, we believe that the public interest would be served by granting petitioner's counterproposal and allotting Channel 289C at Decatur, Texas, modifying the license of Station KSTV-FM accordingly, and granting the related channel substitutions at Wichita Falls,⁸ and Jacksboro, Texas, and Healdton, Oklahoma, and modifying the construction permit and license, respectively, for Stations KOXC(FM) and KICM(FM). We also will dismiss Lake Country's counterproposal and Cook's expression of interest in Lake Country's counterproposal,⁹ and will deny Cook's counterproposal at Lone Grove on comparative grounds.

9. We find that a grant of petitioner's proposal is in the public interest for the following reasons. First, petitioner's proposal is preferred pursuant to the Commission's allotment priorities. These priorities are (1) first full time aural service; (2) second full time aural service; (3) first local service; (4) other public interest matters. Coequal weight is given to priorities (2) and (3). *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). In this case, the first two priorities are not implicated. With respect to priority three, Decatur is the only community which clearly will receive first local service. Benbrook, petitioner's original proposal, is a community within the Dallas-Fort Worth Urbanized Area, as defined by the U.S. Census Bureau, which raises a question whether a first local service preference would be warranted. See *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck, Inc. KBEC*, 3 FCC Rcd 5374 (1988). Commission records confirm that Lone Grove is currently served by Station KYNZ(FM), and therefore Cook's proposal would provide second local transmission service to Lone Grove. Second, the change of community from Stephenville to Decatur is consistent with the Commission's policies with respect to change of

⁷ Since no expression of interest was filed for this allotment, it was not considered.

⁸ As indicated in note 3, *supra*, Sawmill Broadcasting ("Sawmill") became the permittee of Channel 288A at Wichita Falls, Texas during the pendency of this proceeding. We note, however, Sawmill is not entitled to reimbursement because Sawmill was an applicant at the time of the *Notice*, and received actual notice of the channel substitution. We also note that although the Commission granted an application (BAPH-910912GQ) for assignment of construction permit from Sawmill to Red River Communications, Inc., on October 28, 1991, notice of consummation of that transaction has not yet been received.

⁹ We note that because Lake Country withdrew its counter-

proposal for Channel 229C1 at Healdton before it was placed on public notice, the public notice of that counterproposal was made in error. As a result, we will dismiss Lake Country's counterproposal as requested and the competing expression of interest filed by Cook. In light of this resolution, we note that Lake Country will be reimbursed in full for its related reasonable expenses in making the channel substitution from Channel 289C2 to Channel 229C2. See *Circleville, Ohio*, 9 RR 2d 1579 (1967). We also note that Lake Country would not have been entitled to reimbursement for the expenses incurred in effectuating the upgrade proposed in its counterproposal. See *Oakdale, Louisiana*, 3 FCC Rcd 5815 (1988).

community of license pursuant to Section 307(b) of the Communications Act of 1934, as amended, because Stephenville retains two existing aural services, Stations KSTV(AM), and KCUB(FM), and Decatur is currently unserved. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, *recon. granted in relevant part*, 5 FCC Rcd 7094 (1990). Therefore, petitioner's counterproposal to reallocate Channel 289C at Decatur will be preferred over Cook's proposal to allocate Channel 229C1 at Lone Grove.

10. An engineering analysis reveals that Channel 289C can be allocated at Decatur without a site restriction,¹⁰ and Channel 269A can be substituted for Channel 229A at Jacksboro without a site restriction.¹¹ Channel 229C2 can be substituted for Channel 289C2 at Healdton at Station KICM(FM)'s present transmitter site,¹² and Channel 273A can be substituted for Channel 288A at Wichita Falls at KOXC(FM)'s construction permit transmitter site.¹³

11. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 23, 1992, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Healdton, Oklahoma	229C2
Decatur, Texas	289C
Jacksboro, Texas	269A
Stephenville, Texas	252A
Wichita Falls, Texas	225C, 260C1, 273A, 277C, 292C2

12. IT IS FURTHER ORDERED, That, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Cen-Tex Media, Inc. for Station KSTV(FM), Channel 289C1, Stephenville, Texas, IS MODIFIED to specify operation on Channel 289C, Decatur, Texas, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission an application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Lake Country Communications, Inc. licensee of Station KICM(FM), Channel 289C2, Healdton, Oklahoma, and the construction permit of Sawmill Broadcasting, permittee of Station KOXC(FM), Channel 288A, Wichita Falls, Texas, ARE MODIFIED to specify operation on Channel 229C2 and Channel 273A, respectively, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KICM(FM)'s or Station KOXC(FM)'s authorizations, except the channels as specified above. Any other changes, except those so specified under Section 73.1620 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301)

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, provided the transmission facilities comply in all respects with the stations' authorizations except for the channels as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

4. IT IS FURTHER ORDERED, that the Secretary shall send a copy of this Report and Order by Certified Mail Return Receipt Requested, to the following:

Robert A. DePoni,
Esq.
Fletcher, Heald
& Hildreth
1225 Connecticut
Avenue, N.W., Suite 400
Washington, D.C. 20036
(Counsel for Sawmill Broad-
casting, permittee of
KOXC(FM), Wichita Falls,
TX)

Red River
Communications, Inc.
1209 Parkway
Austin, Texas 78703
(Assignee of KOXC(FM),
Wichita Falls, TX)

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Curtis, Jr., Esq.
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Avenue, N.W., Suite 400
Washington, D.C. 20036
(Counsel for Lake Country
Communications, Inc.)

Albert L. Crain
Route 6, Box 250
Byhalia, MS 38611
(Applicant for Channel 229A,
Jacksboro, TX)

¹⁰ The coordinates for Channel 289C at Decatur are 32-57-30 and 98-00-15.

¹¹ The coordinates for Channel 269A at Jacksboro are 33-13-06 and 98-09-48. As indicated in note 2 *supra*, an application (BPH-930524MA) was filed for Channel 229A at Jacksboro. Our engineering analysis confirms that the site specified in that application (33-13-36 and 98-10-51) will also work for Channel 269A. The applicant will be served with a copy of this Report

and Order and be permitted to amend its application to Channel 269A without loss of cut-off protection. *See, e.g., Decatur, Indiana*, 6 FCC Rcd 1230, 1232 (1991).

¹² The coordinates for Station KICM's transmitter site at Healdton are 34-02-27 and 97-20-00.

¹³ The coordinates for Station KOXC's transmitter site at Wichita Falls are 33-53-50 and 98-32-33.

15. IT IS FURTHER ORDERED, that the counter-proposal filed by Lake Country Communications, Inc. (RM-7451) IS DISMISSED.

16. IT IS FURTHER ORDERED, that the counter-proposal filed by William L. Cook (RM-7449) IS DENIED.

17. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

18. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau